

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BRIARWOOD FARMS, INC.

Index No. 07 civ. 3657 (CLB)

Plaintiff,  
- against -

**REPLY**  
**AFFIDAVIT**

TOLL BROS., INC.

Defendant.

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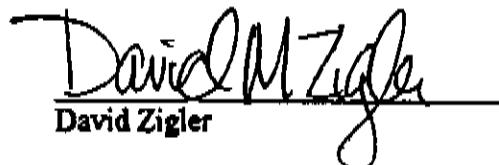
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ROCKLAND )

David Zigler, being duly sworn, deposes and says:

1. I am the president of Atzl, Scatassa & Zigler, P.C. ("ASZ"), which is the firm retained by Plaintiff, Briarwood Farms, Inc. ("Briarwood") to pursue and obtain final approval of a subdivision known as Halley Estates, II ("Halley") in the Village of Pomona, Rockland County, New York ("Pomona"). As such, I am fully familiar with the facts and circumstances contained herein.
2. During the subdivision application process, I had multiple meetings with representatives of Toll to review the maps that we were presenting to the Planning Board.
3. These maps designated hypothetical house footprints on the proposed lots.
4. I discussed with the representatives of Toll that the presentation of the hypothetical houses was to facilitate addressing engineering and planning issues including, *inter alia*, drainage and the sloping terrain, and doing this was necessary to comply with the Village's building codes, including the steep slope ordinance.

5. I discussed with Toll's representatives the limitations of steep slope review if we were not presenting site specific building plans for each lot. Notwithstanding, Toll expressly declined to provide any site specific building plans.

6. The Court should be aware that final approval is now imminent, as at the last meeting of the Planning Board the Chairman of the Board indicated that a resolution for final approval was being prepared for adoption at the next meeting. Based upon the final map, the steep slope ordinance may be implicated on eight lots, perhaps less, depending upon what the builder ultimately seeks to build.



David Zigler

Sworn to before me this  
10 Day of July, 2008



Andrew S. Atzl

Notary Public

ANDREW S. ATZL  
Notary Public - State of New York  
No. 01AT6109220  
Qualified in Rockland County  
My Commission Expires April 26, 2012